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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JERRY LYNN COBB,

Defendant and Appellant.

D076960

(Super. Ct. No. SCD106058)

APPEAL from an order of the Superior Court of San Diego County, Frederic L. Link, Judge. Affirmed.

Janice R. Mazur, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

In 1995, a jury convicted Jerry Lynn Cobb of second degree murder with personal use of a firearm (Pen. Code,¹ §§187 and 12022.5, subd. (a); count 1), attempted murder (§§ 664 and 187; count 2), and assault with a

¹ All further statutory references are to the Penal Code.

semi-automatic firearm (§ 245, subd. (b); count 3). Cobb was sentenced to an indeterminate term of 19 years to life.

This court affirmed the judgment in an unpublished opinion. (*People v. Cobb* (July 31, 1996, D023435) [nonpub. opn.].)

In 2019, Cobb filed a motion to allow introduction of mitigating evidence pursuant to *People v. Franklin* (2016) 63 Cal.4th 261 and section 1203.01. The court granted the motion.

Cobb filed a second motion entitled: “Motion for the Development of the Court Records to the Satisfaction of Changes in Penal Code section 188 Express Malice Must be a Proven Separated in Murder of the Second Degree, thereby is Barred when the Supports Sudden Quarrel, Heat of Passion, Defense in the State of Mind of Fear to Greater Injuries.” It appears the court treated the motion as seeking relief under section 1170.95.

Cobb’s submission also argued the trial court erred in the 1995 trial by not instructing on voluntary manslaughter.

The trial court denied Cobb’s motion attacking his murder conviction based “on the facts of the case.”

Cobb filed a notice of appeal.

Appellate counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) indicating she has not been able to identify any arguable issues for reversal on appeal. Counsel asks the court to review the record for error as mandated by *Wende*. We offered Cobb the opportunity to file his own brief on appeal, but he has not responded.

STATEMENT OF FACTS

The facts of the offenses are set forth in our 1996 opinion. We will adopt the summary of those facts set forth in the appellant’s opening brief for convenience.

Jerry Cobb lived with N.W. from December 1992 until May 1993. Their son was born in October 1993. Cobb would pick up their son for visitation at the home of N.W.'s mother, Annie W., on Logan Avenue.

On the afternoon of August 20, 1994, Cobb arrived to pick up his son as N.W. was about to depart. N.W. became angry when she saw Cobb had brought his girlfriend. A fight ensued involving Cobb, N.W., a friend of N.W., and N.W.'s mother, who suffered a cut to her arm.

N.W. went to her mother's apartment to call for help and told Cobb she was going to call her brothers who would "kick his ass." Cobb said he would "smoke them mother fuckers" and drove away.

N.W. called her brothers Dushane and Anthony. Anthony went to Annie's apartment. While there he was overheard answering a phone call, and commenting to the caller "You're at 47th and Logan? . . . Man, that's my mom." Anthony then slammed down the phone, put a knife in the back of his pants and drove off.

Officer Troy Owens, who was in plain clothes and driving an unmarked white police car, stopped at the intersection of 47th and Logan at about 4:00 p.m. Owens saw Cobb and Anthony standing in front of Cobb's car. Cobb was pointing a gun at Anthony, apparently yelling at him, while Anthony stood with his arms at his side.

Owens drove through the intersection and, as he did so, Cobb looked toward him and then ran to his vehicle and sped off around the corner onto 47th Street while Anthony walked to a taco shop on the corner. Owens made a U-turn to follow Cobb, and as he approached the corner of 47th Street, he saw Anthony in the taco shop parking lot.

As Owens turned the corner he saw Cobb's car in the taco shop parking lot. He also saw Cobb standing four or five feet away from an unarmed

Anthony, firing the handgun at him. Anthony fell to the ground. Another witness saw Cobb shoot at Anthony from behind, and then continue to fire at him as Cobb ran around in front of his victim. This witness also observed there was nothing in Anthony's hands. Anthony was hit by seven bullets, including four shots from behind and died from multiple gunshot wounds. When Anthony's corpse was moved, his knife was found still tucked into the back of his trousers.

After killing Anthony, Cobb ran toward Owen's vehicle while firing at it. Several shots hit the hood, windshield and dashboard of Owen's car. Owens stopped, got out of the car, and returned fire. Cobb ran to his car and drove off.

According to Cobb, after the first meeting with Anthony, during which Cobb pointed the gun at him to keep him at a safe distance, the two agreed to continue the discussion at the taco shop parking lot. Cobb claimed that when he got out of his car there, he saw Anthony hurrying toward him, while a white car drove slowly toward him also. Cobb testified that, fearing the white car might contain a friend of Anthony's and seeing Anthony "hinch up" his arm, he began firing at Anthony and the white car.

Cobb presented testimony of two of Anthony's work supervisors who both were of the opinion that Anthony was violent. One had seen a gun in Anthony's car and had been threatened by him. It was stipulated that Anthony had been convicted in 1993 of carrying a concealed firearm in a vehicle.

A fellow employee and close friend of Anthony testified about an incident in which a customer who was high on drugs assaulted Anthony, breaking his nose and throwing a car battery at him, and Anthony had only attempted to defend himself.

DISCUSSION

As we have noted, appellate counsel has filed a *Wende* brief and asks the court to review the record for error. To assist the court in its review of the record, and in compliance with *Anders v. California* (1967) 386 U.S. 738 (*Anders*), counsel has identified a possible issue that was considered in evaluating the potential merits of this appeal: Whether the court erred in denying Cobb's motion for resentencing under section 1170.95.

We have reviewed the entire record as required by *Wende* and *Anders*. We have not discovered any arguable issues for reversal on appeal. Competent counsel has represented Cobb on this appeal.

DISPOSITION

The order denying Cobb's motion for resentencing is affirmed.

HUFFMAN, J.

WE CONCUR:

BENKE, Acting P. J.

IRION, J.